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14 IN THE UNITED STATES DISTRICT COURT
15
16 EASTERN DISTRICT OF CALIFORNIA

17
18 UNITED STATES OF AMERICA,
19 Plaintiff,
20 v.
21 ELENO FERNANDEZ-GARCIAJOSEPH D.
22 SANFORD,
23 Defendant.

24 CASE NO. 1:20-CR-00138-NONE-SKO

25 STIPULATION REGARDING EXCLUDABLE
26 TIME PERIODS UNDER SPEEDY TRIAL ACT;
27 FINDINGS AND ORDER

28 DATE: September 21, 2020
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

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2 This case is set for a status conference on June 8, 2020. On May 13, 2020, this Court issued
3 General Order 618, which suspends all jury trials in the Eastern District of California until further notice
4 and allows district judges to continue all criminal matters, excluding time under the Speedy Trial Act
5 with reference to the court's prior General Order 611 issued on March 17, 2020, the court's subsequent
6 declaration of a judicial emergency based on 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council's
7 Order of April 16, 2020 continuing this court's judicial emergency for an additional one-year period and
8 suspending the time limits of 18 U.S.C. § 3161(c) until May 2, 2021, with additional findings to support
9 the exclusion in the Judge's discretion. This and previous General Orders were entered to address
10 public health concerns related to COVID-19.

11
12 Although the General Orders address the district-wide health concern, the Supreme Court has
13 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive

1 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
2 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
3 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
4 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
5 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
6 or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
8 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
9 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
10 the ends of justice served by taking such action outweigh the best interest of the public and the
11 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
12 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
13 ends of justice served by the granting of such continuance outweigh the best interests of the public and
14 the defendant in a speedy trial.” *Id.*

15 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
16 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
17 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
18 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
19 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
20 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
21 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
22 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
23 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
26 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date

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28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 for the change of plea. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial
2 continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendants, by and
5 through defendants’ counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for a status conference on September 21, 2020.

7 2. By this stipulation, defendant now moves to continue the status conference to December
8 7, 2020, at 1 p.m. and to exclude time between September 21, 2020, and December 7, 2020, under Local
9 Code T4.

10 3. The parties agree and stipulate, and request that the Court find the following:

11 a) Counsel for defendant desires additional time to confer with his clients, conduct
12 further investigation, and reach a potential resolution.

13 b) Counsel for defendant believes that failure to grant the above-requested
14 continuance would deny him/her the reasonable time necessary for effective preparation, taking
15 into account the exercise of due diligence.

16 c) The government does not object to the continuance.

17 d) In addition to the public health concerns cited by General Order 617, and
18 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
19 this case because the defendants do not consent to proceed using videoconferencing or telephone
20 conferencing pursuant to General Order 614.

21 e) Based on the above-stated findings, the ends of justice served by continuing the
22 case as requested outweigh the interest of the public and the defendant in a trial within the
23 original date prescribed by the Speedy Trial Act.

24 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
25 et seq., within which trial must commence, the time period of September 21, 2020 to December
26 7, 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) (Local
27 Code T4) because it results from a continuance granted by the Court at defendant’s request on
28 the basis of the Court’s finding that the ends of justice served by taking such action outweigh the

1 best interest of the public and the defendant in a speedy trial.

2 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
3 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
4 must commence.

5 IT IS SO STIPULATED.

6 Dated: September 15, 2020

7 McGREGOR W. SCOTT
United States Attorney

8 /s/ KAREN A. ESCOBAR
9 KAREN A. ESCOBAR
10 Assistant United States Attorney

11 Dated: September 15, 2020

12 /s/ DAVID TORRES
13 DAVID TORRES
14 Counsel for Defendant
15 ELENO FERNANDEZ-
16 GARCIAJOSEPH D.
17 SANFORD

18 **FINDINGS AND ORDER**

19 IT IS SO ORDERED.

20 Dated: September 15, 2020

21 /s/ Sheila K. Oberto

22 UNITED STATES MAGISTRATE JUDGE